IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WP(C).No. 28685 of 2005(M)

ORDER ON ISSUE NO.1 IN O.S.NO.163/2005 OF PRL.MUNSIFF'S COURT, KASARAGOD.

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PETITIONERS:

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1. A.M. ABDULLA, S/O. MOHAMMED,
   RESIDING AT BELLURADUKKAM, PADDY VILLAGE,
   KASARAGOD TALUK.

2. ABDUL REHIMAN OF -DO- -DO-.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENTS:

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1. A.A. MUHAMMED HAJI, S/O. ABDULLA,
   KOLA KOLA, BELLURADUKKAM, PADDY VILLAGE,
   P.O. EDANEER, KASARAGOD TALUK.

2. HASSAINAR, S/O. ABDUL REHIMAN,
   BELLURADUKKAM, PADDY VILLAGE, P.O. KALLAKATTA,
   KASARAGOD TALUK.

3. M.M. SULAIMAN, S/O. M.A. MUHAMMED,
   BELLURADUKKAM, PADDY VILLAGE, P.O. KALLAKATTA,
   KASARAGOD TALUK.

4. A.K. ABDULLA, S/O. AHAMMED,
   BELLURADUKKAM, PADDY VILLAGE, P.O. KALLAKATTA,
   KASARAGOD TALUK.

R1 TO R3 BY ADV. SRI.K.G.GOURI SANKAR RAI
SRI.K.A.ABDUL JABBAR, SC, WAKF BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.28685 of 2005

APPENDIX

PETITIONERS' EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN O.S.163/05 FILED BY PETITIONERS BEFORE MUNSIFF'S COURT, KASARAGOD, DT.18.4.05.

EXT.P2 – TRUE COPY OF WRITTEN STATEMENT FILED BY RESPONDENTS IN O.S.163/05, DT.17.6.05.

EXT.P3 – TRUE COPY OF REJOINDER FILED BY PETITIONERS IN DO. DT.22.6.05.

EXT.P4 – TRUE COPY OF PATTA ISSUED TO FATHER OF PETITIONERS DT.11.7.69.

EXT.P5 – TRUE COPY OF COMMN. REPORT FILED BY COMMR. IN OS.163/05, DT.29.4.05.

EXT.P6 – TRUE COPY OF ORDER PASSED IN OS.163/05 BY MUNSIFF, DT.31.8.05.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.28685 OF 2005

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DATED THIS THE 6TH SEPTEMBER, 2007

J U D G M E N T

The plaintiffs in a suit challenge Ext.P6 order of the learned Munsiff by which the preliminary issue as to whether the suit is barred by the provisions of the Wakf Act, 1995 is answered against them. The respondents in the Writ Petition are the defendants in the suit. The case of the plaintiffs as noticed by the learned Munsiff is that one acre of property in R.S.No.155/1C originally belonged to their father and he built a Masjid on that property and set apart a plot having 28 cents in the said survey number for the purposes of that Masjid. The Masjid is known as Belluradukkam Badar Masjid and the same is a private mosque belonging to the family of the plaintiffs and managed by an unregistered committee consisting of the family members; and the 1st plaintiff-1st petitioner is the President of the Committee. The allegation is that the defendants unlawfully formed a Committee to capture the management of the Masjid. The suit is filed for a declaration that the defendants have no right to form a Committee to manage the affairs of the Belluradukkam Badar Masjid and for consequential reliefs.

2. It was contended by the respondents-defendants through

their joint written statement that the father of the plaintiffs had dedicated 28 cents of land in R.S.No.155/1C and made a wakf of the same in favour of Belluradukkam Badar Masjid as per Wakf Deed No.126/73 dated 8.2.1973. The suit therefore is barred under the provisions of Wakf Act, 1995.

3. Mr.P.K.Muhammed, learned counsel for the petitioners would address me extensively on the various grounds raised in the Writ Petition. According to him, the judgment of this Court referred to in the impugned order [**Muneerul Islam Sangham v. Kunhamu** (2004 (2) KLT 906)] was not appreciated by the court below in the proper perspective. The Advocate Commissioner's report to which detailed objections had been filed was also misconstrued by the learned Munsiff. The suit, according to the learned counsel, was also in respect of the properties not covered by the Wakf Deed and the same being a regular civil suit is not barred by Section 85 of the Wakf Act nor is it covered by Section 87 of the Act.

4. Even though the name of Sri.K.A.Abdul Jabbar, Standing Counsel for the Wakf Board was also shown in the cause list, the learned Standing Counsel did not enter appearance for rendering assistance.

5. Ext.P1 is copy of the plaint. A careful perusal of Ext.P1 will show that the suit is instituted by the petitioners claiming that Belluradukkam Badar Masjid is a private mosque belonging to their family and that the defendants have no right to interfere in the management of the mosque. As rightly noticed by the learned Munsiff, the petitioners did not have a contention that the wakf is an unregistered wakf and the relief claimed in the suit is regarding enforcement of rights in respect of any such wakf. Section 85 bars suits like Ext.P1. The argument based on Section 87 of the Act that the suit is in respect of properties not covered by the Wakf Deed, being of a civil nature relating to such other properties also and therefore maintainable does not have proper foundation in Ext.P1. In any view, the impugned order cannot be said to be vitiated to the extent of warranting correction in the supervisory jurisdiction of this Court under Article 227 which is expected to be invoked only exceptional circumstances.

The challenge against Ext.P6 fails and the Writ Petition will stand dismissed, however, in the circumstances, without any order as to costs.

tgl **(PIUS C.KURIAKOSE, JUDGE)**